

07/01/2018

Attorney Joseph A. Bugni
Federal Defender Services of Wisconsin, Inc.
22 East Mifflin Street, Suite 1000
Madison, Wisconsin 53703

RE: Examinee: Samy Mohammed Hamzeh
Date of Birth: 07/31/1992
Date of Examination: 01/08/2018
Place of Examination: Kenosha County Jail
Case: United States of America v. Samy Mohammed Hamzeh
(16-CR-21)

Dear Mr. Bugni,

I was retained by the federal defender's office to test Mr. Samy Hamzeh's IQ. I charged the office \$2,850.00 for the testing and \$1,950.00 for this report and if called upon to testify, I will charge an additional amount to be determined after specifics are determined. I spent 1.5 hours with Mr. Hamzeh at the Kenosha County Jail, and following a clinical interview, administered the Test of Nonverbal Intelligence – 4 (TONI-4).

The fact that English is Mr. Hamzeh's second language has no effect on results of the TONI-4. As the name implies, it is a nonverbal measure of intelligence. The TONI-4 test manual specifically states, "The Test of Nonverbal Intelligence (TONI) was created in response to the need for an individually-administered test of general intelligence with strong psychometric characteristics and a nonverbal, motor-reduced format that would make it possible to assess intelligence without the effects of a person's linguistic or motor skills confounding the results and yielding a potentially inaccurate assessment of cognitive ability" (Brown, L., Sherbenou, R.J., & Johnsen, S.K., 2010. TONI-4 Examiner's Manual. Austin, TX: Pro-Ed publications). Since its original publication, subsequent research has replicated its results and repeatedly demonstrated its validity and reliability. The TONI-4 has a known error rate, and it is one of the most commonly-used, individually-administered tests of general intelligence in use today in the professional community.

On the Test of Nonverbal Intelligence – 4 (TONI-4), Mr. Hamzeh's TONI-4 Quotient (an "IQ score") was measured at 78 (Percentile Rank, PR=7, Borderline Range). A score in this range means that the person will have limited capacities to reason, solve problems, plan and carry out activities, engage in abstract reasoning, make good judgments, learn and remember things, and learn from experience. They will also have more limited adaptive skills with regard to independent and effective communication, social participation, and independent living at home, school, work and in the community. These capacities and limitations will be more marked than 93% of the population of individuals of the same age (PR=7).

The TONI-4 Quotient score of 78 has a PR of 7, meaning that 93% of people his age (20-29 years old) have a higher level of intelligence than he does. This IQ score has a level of uncertainty to it (as do all psychological test scores), and the 95% confidence interval for his true score would be 75-81.

The term “Mental Retardation” was renamed in the current (fifth) edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5, American Psychiatric Association, 2013). The set of conditions previously referred to as “mental retardation” is now referred to as “Intellectual Disability” or “Intellectual Developmental Disorder,” following on the heels of a federal statute (111-256, Rosa’s Law) that renamed the concept. Previous editions of the DSM at least since DSM-III (1980) had not changed the standards for Mild to Profound levels of retardation, and these were classified as follows:

<u>Level/Condition</u>	<u>IQ range</u>
Borderline Intellectual Functioning	71-84

Intellectual Disability (previously, Mental Retardation)

Mild	50-70
Moderate	35-49
Severe	20-34
Profound	< 20

With the publication of DSM-5, though, IQ score is no longer used to define the severity of intellectual disability because adaptive functioning capacity was the critical aspect of these conditions because the severity of the condition was ideally based in the amount of life supports the person needed (and because IQ scores tend to be less valid as scores get into the very low ranges). Severity levels are now classed by the diagnostician according to suggestions in the DSM that relate to limitations of conceptual reasoning, social functioning, and capacity to complete practical, daily living tasks (e.g., personal care, food preparation, money management, etc.) independently.

As noted in the DSM-5, adults with intellectual limitations, including borderline intellectual functioning (BIF), have impairments in cognitive and conceptual, social, and practical domains. Adults with BIF have mildly impaired abstract reasoning capacity, executive functions (e.g., planning, self-monitoring, strategizing, setting priorities, self-monitoring, impulse control), learning, memory, and functional academic skills (e.g., reading, money management).

They also have social impairments in that they are immature in social interactions, and have difficulty perceiving and interpreting social cues (both verbal and nonverbal). They have

difficulties with conversations in that these are more immature and limited in scope and breadth than those without such limitations. There is often a limited understanding of risk in social situations, and they are at risk of being gullible and manipulated by others.

At the practical level, people with BIF may be self-sufficient in many aspects of self-care while they need assistance in specific areas (e.g., food prep, grocery shopping, transportation, banking, money management). Because people with BIF have neurocognitive limitations (including some that are principally governed by the frontal lobes of the brain), their appreciation of consequences of actions, anticipate outcomes of potential alternative actions, and exercise restraint is impaired.

Most people with neurocognitive limitations attempt to portray themselves with a social mask of competence unencumbered by obvious limitations. The classic text, *The Cloak of Competence* (Robert Edgerton, 1993) provides many illustrative examples of just this mechanism at work. People with BIF go about this cloaking in unique ways. Some blame external reasons, while others simply deny that they have any limitations, even when those are obvious to others. Bragging and boasting are often signs of self-perceived weakness and poor self-esteem, as Edgerton's examples illustrate.

Children with BIF have a difficult time making friends. Not only is that because they have limitations in their own social competencies, their differences are also noticed by others their age, and they are often the target of intense bullying and shaming by others. When they do establish friendships with others, these are often in a fairly constricted circle, and they tend to tolerate more in such relationships than others would. Many studies have shown that children with BIF have lower levels of self-esteem and higher levels of depression and anxiety than their more competent peers. As I explain in greater detail below, people with BIF are rather uniquely susceptible to being influenced and manipulated by their friends, fearing that if they do not do as they are told, they risk losing one of these few social resources that they had been able to develop.

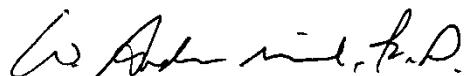
A consistent finding in the social science research literature is that people with intellectual limitations are more suggestible, more susceptible to external and social cues, more likely to acquiesce, and more submissive than are people with at least normal intelligence (see Robert B. Edgerton, *The Cloak of Competence*, 1993). In this literature, social acquiescence is related to submissiveness and social desirability, or the feeling of wanting to be accepted and to please others. Rosen's classic study (Rosen, Floor, & Zistein, 1996. Investigating the phenomenon of acquiescence in the mentally handicapped. *British Journal of Mental Subnormality*, 20, 58-68) found that people with intellectual limitations are particularly prone to manipulation by others. This finding has been noted by others as well (Perlman, et al., 1994, Sigelman, et al., 1981), and has been linked to the person's experience with failure in many areas of life and the greater level of control that others can and do exert. It is likely that a person with BIF would find it difficult to walk away from a group of friends no matter what the topic of conversation was (e.g., offensive or socially awkward) because of these same socially-limiting factors that has been demonstrated time and again in social science research.

In addition, people with BIF have difficulties in social competence because their neurocognitive limitations negatively affect the accurate perception of social communications and they have a limited capacity to reason through those perceived cues from others before deciding what action to take. Even then, though, their communication to others is also more limited than those with at least a low average intellectual capacity. These limitations have recently been documented and explained by Theory of Mind (ToM) research (see Baglio, Blasi, Intra, Castelli, et al., 2016). Social competence in children with borderline intellectual functioning: Delayed development of Theory of Mind across all complexity levels. *Frontiers in Psychology*, 7, 1604). Further, abstract reasoning capacity is one of the specific limitations of most neurocognitive conditions, including BIF.

A person with BIF will have more difficulty understanding and appreciating the legality of an action than a person of at least low average intelligence. As noted by Wieland and Zitman (2016): “borderline intellectual functioning is not a disorder. But people with borderline intellectual functioning, or an IQ between 70 and 85, do comprise a vulnerable group. Children with borderline intellectual functioning are uniquely at risk for receiving poor parenting... In adult life, contrary to the DSM-III statement, perhaps increasingly so owing to the growing complexity of society, many people with borderline intellectual functioning do have problems in adaptive functioning. In fact, they face difficulties across all areas of ordinary life. They are at increased risk of experiencing physical problems, poverty, have more difficulties with activities of daily living, have limited social support, and no access to specialized services. They often live problematic lives, functioning under high strain but unnoticed by the rest of society. Many people with borderline intellectual functioning do not have psychiatric disorders, but they are more vulnerable to the development of mental health problems than people of average or above average intelligence and may also be more vulnerable than people with mild intellectual disability.”

Wieland and Zirman (2016) continue: “As is the case with many psychiatric diagnoses, being classified as having borderline intellectual functioning can have a stigmatizing effect. People with a low IQ often try to prevent their limited intellectual capabilities being exposed by painstakingly trying to behave ‘normally’ and masking their disabilities and special needs.”

Sincerely,



William A. Merrick, Ph.D.
Licensed Psychologist